

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LOUIS E. HUGUES and DEPARTMENT OF AGRICULTURE,
SIERRA NATIONAL FOREST, Clovis, Calif.

*Docket No. 97-1161; Submitted on the Record;
Issued January 26, 1999*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's benefits effective August 19, 1995.

On December 10, 1993 appellant, then a 62-year-old grounds maintenance employee, filed a notice of traumatic injury alleging that he injured the left side of his lower back on that same date when his back was twisted and pulled as he departed from a vehicle in the course of his federal employment. The Office accepted the claim for lumbar strain and appellant returned to full duty. On September 1, 1994 appellant filed a notice of traumatic injury alleging that he injured both sides of his lower back near the points of his hips when he lifted a rock on August 18, 1994 while constructing a retaining wall in the course of his federal employment. The Office accepted the claim for low back strain and appellant received compensation for total temporary disability.¹

On October 31, 1994 Dr. Daniel Schaffner, appellant's treating physician and a general practitioner, diagnosed degenerative arthritis and disc disease due to his August 18, 1994 employment injury. He indicated that appellant remained disabled.

On November 28, 1994 Dr. V. Roy Smith, a Board-certified neurosurgeon, examined appellant at the request of Dr. Schaffner. Dr. Smith indicated that appellant presented with low back pain of several months duration. He recorded the history of appellant's August 18, 1994 injury. He noted that appellant had daily intermittent pain related to twisting his back and aggravated by prolonged sitting and strenuous activity. He noted that the pain appeared equally on both sides of the lower back and that it sometimes radiated into the buttock area. He stated that infrequently the pain required appellant to lay down and that then the pain resided in about an hour. His physical examination revealed slight thorocolumbar scoliosis and a loss of the

¹ The Office combined the claims for appellant's injuries sustained on December 10, 1993 and August 18, 1994. Appellant's claim for an injury occurring on July 14, 1990 was not combined with these claims.

usual lordosis. He stated that forward flexing at the waist resulted in low back pain when his fingers reached the mid tibial level. Straight leg raising in the supine position was possible to 80 degrees bilaterally, but limited by tight hamstrings and low back pain. Dr. Smith's review of appellant's x-rays revealed mild thorocolumbar scoliosis, a mild narrowing of the L4-5 disc space with a couple millimeter anterior spondylolisthesis on L4 on L5 on a degenerative basis, degenerative changes in the facets at multiple levels and a mild narrowing of the L5-S1 level. He diagnosed lumbar sprain superimposed upon lumbar spondylosis. He stated that appellant's back pain was due to this condition. He indicated that appellant was temporarily disabled, but that he might be able to return to light duty in a couple of months. He recommended that appellant not return to work with heavy lifting and repetitive bending and twisting.

On February 22, 1995 Dr. Schaffner again diagnosed degenerative back disease and disc disease. He checked "yes" to indicate that this condition was due to appellant's August 18, 1994 employment injury and "yes" to indicate that he remained disabled from his usual work.

On June 5, 1995 the Office referred appellant, along with a statement of accepted facts, to Dr. Timothy C. Watson, a Board-certified orthopedic surgeon, for a second opinion examination.

On June 15, 1995 Dr. Watson indicated that appellant's chief complaint was low back pain radiating into the thighs. He diagnosed multi-level degenerative disc disease lumbar sprain with probable symptom amplification. He stated that his diagnosis of degenerative disc disease was based on x-rays and a magnetic resonance imaging scan. He stated that positive Waddell's findings make it appear appellant was amplifying symptoms. He stated appellant had a preexisting condition that may have been aggravated by his work, but that was not caused by his work. He stated that he believed the aggravation was temporary and should have resolved, to a 90 percent probability, within 4 months of the injury. He stated that any continued pain would be due to his underlying degenerative disc disease and that, therefore, he expected appellant's employment-related condition to resolve by December 18, 1994. He stated appellant's work restrictions were due to his underlying condition rather than any employment injury.

On July 10, 1995 the Office issued a "notice of proposed termination of compensation." The Office indicated that the weight of the medical evidence showed that appellant's work injury had resolved. Appellant was given 30 days to submit additional argument or evidence.

On July 18, 1995 Dr. Schaffner stated that he agreed with Dr. Watson's assessment that appellant had multi-level degenerative disease with a superimposed lumbar strain. He stated that appellant's pain continued to interfere with his normal activities, but he admitted that it was difficult to evaluate a patient's pain. He conducted a physical examination which revealed tenderness to the lumbar midline region, along the paraspinous muscles, and just above the sacroiliac joint. He indicated that appellant had positive straight leg raising sign at 20 degrees bilaterally, although I think that if forced he could lift his legs further. He repeated his assessment of multilevel degenerative disc disease with a superimposed lumbar strain. Finally, he stated that most of appellant's problems were degenerative in nature.

By decision dated August 16, 1995, the Office finalized its proposed termination of benefits. In an accompanying memorandum, the Office indicated that Dr. Watson's opinion

constituted the weight of the evidence inasmuch as he provided the only well-reasoned opinion of record.

Appellant subsequently requested an oral hearing.

On August 7, 1995 Dr. Schaffner treated appellant for an exacerbation of his low back pain. His physical examination revealed tenderness along the lumbar region and mild swelling over the right paraspinous muscles. He noted that straight leg raising caused pain while in the sitting position past 20 degrees. He diagnosed back pain from degenerative changes or radiculopathy degenerative disc disease.

On August 9, 1995 Dr. Thomas J. O'Laughlin stated that appellant's lumbar facet disease appeared significantly out of proportion to his lumbar disc disease. He diagnosed severe lumbar facet degenerative arthritis, lumbar spondylosis, and degenerative intravertebral disc disease, multiple levels. He stated that the arthritic findings were worse at L3-4 and L4-5. He stated that these findings were consistent with a long-standing history of hard labor. He also found right sacroiliac joint pain and mild myofascial pain.

On August 23, 1995 Dr. O'Laughlin performed a bilateral L3-4 and L4-5 facet joint block and right L5-S1 facet joint injection with corticosteroids.

On December 1, 1995 Dr. Schaffner indicated that appellant had chronic back pain and exacerbation whenever he did any activity. He stated that appellant could not perform bending, kneeling, squatting, or standing without exacerbating his pain. He stated that appellant could not lift, carry, bend, sit, stand or overexert himself. He stated that there were marked limitations in these activities due to an exacerbation of appellant's symptoms. He indicated that these limitations were due to appellant's employment injury, degenerative back and disc disease.

On May 24, 1996 Dr. O'Laughlin indicated that appellant was disabled from his regular duty due to his degenerative arthritis. Dr. Laughlin stated that appellant's September 1, 1994 work incident in which he twisted his back while lifting a rock was the type of maneuvering that would bring about disc injury and that it is a reasonable medical certainty that this was an aggravating incident. He further stated that the findings that the patient has multiple level degenerative changes and facet joint degenerative arthritis, L4-5 disc space narrowing are changes which occur on a chronic basis and are consistent with excessive wear and tear on the spine which is induced by heavy labor. Dr. O'Laughlin stated that this had been a cumulative process and that it was reasonable to conclude that appellant's condition was contributed to by five years of heavy labor with the employing establishment.

Appellant's hearing was held on August 28, 1996.

By decision dated November 4, 1996, the Office hearing representative affirmed the Office's August 16, 1995 decision terminating compensation benefits after August 19, 1995. The Office hearing representative determined that both Drs. Watson and Schaffner attributed appellant's disability to his underlying degenerative disc disease. Moreover, he attributed little weight to Dr. O'Laughlin's opinion on the basis that he did not specifically attribute appellant's condition to his accepted employment injury occurring on August 18, 1994, but rather to five

years of heavy labor performed by appellant. The Office hearing representative, therefore, found that the weight of the evidence failed to support a condition or disability related to appellant's accepted employment injuries.

The Board finds that the Office met its burden in terminating appellant's compensation effective August 19, 1995.

Once the Office accepts a claim, it has the burden of proving that the disability ceased or lessened in order to justify termination or modification of compensation benefits.² After it has determined that an employee has disability causally related to his federal employment, the Office may not terminate compensation without establishing that disability has ceased or that it is no longer related to his federal employment, the Office may not terminate compensation without establishing that disability has ceased or that it is no longer related to employment.³ Furthermore, the right to medical benefits for the accepted condition is not limited to the period of entitlement to disability.⁴ To terminate authorization or medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which no longer requires medical treatment.⁵

In the present case, Dr. Watson, a Board-certified orthopedic surgeon, provided a well-reasoned opinion stating that appellant's complaints stemmed solely from his underlying degenerative disc disease. Dr. Watson based his opinion on x-ray evidence, magnetic resonance imaging, and a positive Waddell's test, which indicated that appellant was amplifying his symptoms. Dr. Watson explained that appellant's work-related injury of August 18, 1994 was only temporary and should have resolved by December 14, 1994. In contrast, Dr. Schaffner, appellant's treating physician and a general practitioner, provided no basis for his conclusion that appellant's degenerative back disease and disc disease was related to appellant's accepted employment injuries. Because Dr. Schaffner failed to provide an explanation for his conclusion, his opinion is entitled to little weight.⁶ Moreover, Dr. O'Laughlin, a specialist in occupational medicine, attributed appellant's condition and disability to his five-year history of hard labor rather than to any of appellant's accepted traumatic injuries. Although Dr. O'Laughlin referred to appellant's August 18, 1994 injury⁷ as an aggravating incident, he clearly attributes appellant's condition to a cumulative process rather than any traumatic injury. Consequently, Dr. O'Laughlin's opinion is insufficient to establish that appellant has a condition or disability related to an accepted employment injury. The weight of the evidence, therefore, lies with the

² *Frederick Justiniano*, 45 ECAB 491 (1994).

³ *Id.*

⁴ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁵ *Id.*

⁶ *Judith A. Peot*, 46 ECAB 1036 (1995).

⁷ Dr. O'Laughlin mistakenly noted that appellant was injured on September 1, 1994, the date appellant filed his notice of a traumatic injury.

well-rationalized opinion of Dr. Watson finding that appellant's employment-related, accepted injuries had resolved.

The decision of the Office of Workers' Compensation Programs dated November 4, 1996 is affirmed.

Dated, Washington, D.C.
January 26, 1999

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member